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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,512	03/18/2002	Jean-Louis Bougamont	BOUG3002CONJDB	3746

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/14/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/098,512

Applicant(s)

BOUGAMONT ET AL.

Examiner

Shian T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 11-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,405,868. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the patent claims require a system for conserving a liquid substance comprising a solid insert whose outer shape substantially matches the inside shape of the receptacle in which the insert is immersed at least in part, said insert providing protective

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treatment by making contact with said substance over a large interchange area and wherein the insert is free to move inside the receptacle.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11,12, 14, 17, 20, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisberg (US 4,179,027). Weisberg discloses a flexible liquid filled receptacle 2 for storing a deformable insert therein. The insert is immersed within the liquid and has a periphery that substantially matches the inside shape of the receptacle. Any space not occupied by the insert within the receptacle allows the deformation of the receptacle walls. The insert is free to move within the receptacle. Applicant has not claimed the combination of the liquid substance with the flexible receptacle. Therefore, the functional limitation of how the insert provides treatment to the liquid substance is only considered an intended use limitation and has been given little weight with respect to the patentability of the invention. With regard to claim 22, depending upon the chemical make up of the liquid substance, when the liquid contacts the insert, it could present a bactericidal and/or chemical action.

5. Claims 11, 13, 19, 22 and are finally rejected under 35 U.S.C. 102(b) as being anticipated by Zahka (US 4,727,705). Zahka discloses a flexible filled receptacle for storing a rigid insert therein. The insert has a periphery that substantially matches the inside shape of the receptacle.

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Any space not occupied by the insert within the receptacle allows the deformation of the receptacle wall. The insert is free to move within the receptacle.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weisburg in view of Official Notice. Weisburg discloses all of the elements of the claims, but lacks an insert made up of a single piece and a peripheral groove formed halfway along the insert. However, the peripheral groove is conventionally known and does not appear significant since the insert provides sufficient room within the receptacle to push out the article.

8. Claims 19, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisburg. Weisburg discloses all of the elements of the claims, but lacks an insert made up of a single piece and the insert made out of a plurality of granules. However, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893); See also *In re Heinrich*, 268 F.2d 753, 756, 122 USPQ 388, 390 (CCPA 1959). Also, it would have been obvious to make the insert from granules since the sponge of Weisberg is already made out many small pieces.

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9. Claims 16, 18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisburg in view of Bougamont (WO 97/10160). Weisburg discloses all of the elements of the claims, but lacks the bacterial agent and the porosity of the material constituting the insert. However, Bougamont suggests providing antibacterial agent in a dispenser for a product packaged in liquid, for pharmaceutical applications. Therefore, it would have been obvious in view of Bougamont to provide antibacterial agent on the insert of Weisburg to prevent bacterial buildup. It would also have been obvious to provide the desired porosity for the sponge material to absorb the liquid content within the insert. With respect to claim 21, the insert could be made out of ordinary sponge material but depending upon the chemical substance L, it could provide an antioxidant action.

### *Conclusion*

10. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.


If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

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For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302 and for After Final Amendment the number is (703) 872-9303. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on T-F from 7:00am to 4:00pm EST.

STL  
May 13, 2003

  
Primary Examiner  
Shian Luong  
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